

WATERS

CHAPTER 535

SENATE BILL NO. 2188

(Senator Traynor)
(Representatives Brekke, Grosz, D. Johnson)

STATEWIDE WATER DEVELOPMENT AND BONDS

AN ACT to create and enact a new section to chapter 61-01 and chapter 61-02.1 of the North Dakota Century Code, relating to statewide water development goals and the issuance of bonds to finance construction of flood control projects, the southwest pipeline project, a Devils Lake outlet, and a statewide water development program; to amend and reenact subdivision d of subsection 5 of section 61-02-02 of the North Dakota Century Code, relating to the definition of works; to require the pledging of funds for certain water projects; to allocate funds from settlements with tobacco product manufacturers; to provide a statement of legislative intent; to provide for reports to the legislative council; to provide for development of a statewide water development program; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-01 of the North Dakota Century Code is created and enacted as follows:

Statewide water development goals. The legislative assembly will support to the extent funds are available from the water development trust fund the comprehensive statewide water development program developed pursuant to section 2 of chapter 587 of the 1995 Session Laws and to the state water management plan established under section 61-01-26. In order to implement the state water management plan, the legislative assembly will support the following:

1. During the 1999-2001 biennium:
 - a. Southwest pipeline project: Six million dollars in state funds and eleven million five hundred thousand dollars in federal funds, assuming Perkins County water system payment to the state water commission of four million five hundred thousand dollars.
 - b. Northwest area water supply project: Eight million two hundred thousand dollars in local funds and fourteen million eight hundred thousand dollars in federal funds, with an option being considered of the state water commission bonding the local cost-share with local repayment of the total principal, interest, and cost of issuance of the bonds to the state water commission.

- c. Other municipal, rural, and industrial projects: Twenty-five million five hundred thousand dollars in local funds and thirty-nine million nine hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Twenty-five million dollars in local funds, twenty-five million dollars in state funds, and thirty-eight million five hundred thousand dollars in federal funds. The state total cost-share of fifty-two million dollars or so much of the total cost-share that is required may be bonded, requiring a loan repayment estimated at three million nine hundred thousand dollars per year with repayment beginning in 2001.
 - e. Devils Lake outlet to the Sheyenne River and to west Stump Lake: Seventeen million five hundred thousand dollars in state funds and thirty-two million five hundred thousand dollars in federal funds. The total state cost-share of seventeen million five hundred thousand dollars includes mitigation costs and will be bonded, requiring a local repayment estimated at one million five hundred thousand dollars per year, with the split between state and local loan repayment to be determined. Before bonds may be issued for a Devils Lake outlet, construction of the outlet must be approved by the state water commission and the federal government must have agreed to participate in construction of the outlet.
2. During the 2001-03 biennium:
- a. Water to eastern North Dakota: Seventeen million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: Five hundred thousand dollars in local funds, one million seven hundred thousand dollars in state funds, and twelve million five hundred thousand dollars federal funds.
 - c. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Thirty-five million seven hundred thousand dollars in local funds, twenty-seven million dollars in state funds, and sixty-two million nine hundred thousand dollars in federal funds; annual bond payments of three million nine hundred thousand dollars. Components of the Grand Forks flood control project involve water treatment plant improvements. Those federal costs are reflected in subdivision d because of potential cost-sharing using Garrison diversion municipal, rural, and industrial funds. Other projects, such as greenway, are listed under subdivision g.

- f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Thirty-one million seven hundred thousand dollars in local funds, twenty-five million nine hundred thousand dollars in state funds, and thirty-nine million eight hundred thousand dollars in federal funds.
- 3. During the 2003-05 biennium:
 - a. Water to eastern North Dakota: Six million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: One million dollars in local funds, five million dollars in state funds, and eleven million four hundred thousand dollars in federal funds.
 - c. Northwest area water supply project: Eleven million eight hundred thousand dollars in local funds and twenty-one million eight hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
 - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
- 4. During the 2005-07 biennium:
 - a. Water to eastern North Dakota: Eighty-four million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: One million dollars in local funds, nine million five hundred thousand dollars in state funds, and nineteen million five hundred thousand dollars in federal funds.

- c. Northwest area water supply project: Five million eight hundred thousand dollars in local funds and ten million nine hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
 - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
5. During the 2007-09 biennium:
- a. Water to eastern North Dakota: Fifty-nine million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Northwest area water supply project: Three million seven hundred thousand dollars in local funds and seven million dollars in federal funds.
 - c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
 - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
6. During the 2009-11 biennium:
- a. Water to eastern North Dakota: Two million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

- b. Northwest area water supply project: One million seven hundred thousand dollars in local funds and three million three hundred thousand dollars in federal funds.
 - c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
 - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
7. Beyond the year 2011:
- a. Water to eastern North Dakota: The local cost has not been determined and will be determined after project configuration is complete.
 - b. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
 - c. Other municipal, rural, and industrial projects: One hundred thirty million two hundred thousand dollars in local funds and two hundred forty-one million two hundred thousand dollars in state funds. The anticipated three hundred forty-five million dollars in federal cost-share has been used in the previous bienniums and the remaining cost-share for projects has been identified as a potential state cost-share.
 - d. Grand Forks flood control: A total of fifty-eight million five hundred thousand dollars in bond repayments is anticipated.
 - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: A total of fifteen million dollars in bond repayments.
 - f. General projects: Two hundred twenty million two hundred thousand dollars in local funds, one hundred fifty-six million four hundred thousand dollars in state funds, and thirty-four million three hundred thousand dollars in federal funds.

SECTION 2. AMENDMENT. Subdivision d of subsection 5 of section 61-02-02 of the North Dakota Century Code is amended and reenacted as follows:

- d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection,

and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 3. Chapter 61-02.1 of the North Dakota Century Code is created and enacted as follows:

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; and that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds that continued construction of the southwest pipeline project is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that continued construction of the southwest pipeline project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. The legislative assembly also finds that current funding for the southwest pipeline project has become uncertain, and therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.
3. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster; and that construction of an outlet from Devils Lake is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and that construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
4. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for flood control projects authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe

damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may issue bonds for a flood control or reduction project only:

a. When:

- (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;
- (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
- (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;
- (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
- (5) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
- (6) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;
- (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state;
- (8) That no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the flood control or reduction project; and
- (9) That the flood control or reduction project is designed to be cost-effective and that any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the state engineer and approved by the governor;

b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United

States army corps of engineers and the federal emergency management agency; or

- c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.
6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.
7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this subsection, provided that:
- a. (1) The state water commission may only issue bonds for construction of an outlet from Devils Lake when the United States authorizes construction of an outlet and either the state water commission or a federal agency has developed a plan addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet;
- (2) The state water commission or the project sponsor must sign a project cooperation agreement with the United States army corps of engineers;
- (3) The outlet from Devils Lake to west Stump Lake must comply with any environmental impact statement or National Environmental Policy Act provisions required under federal law; and
- (4) Bonds may not be issued if an order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of an outlet from Devils Lake to the Sheyenne River or to west Stump Lake.

- b. The state water commission may only issue bonds to finance the nonfederal cost-share of the Garrison diversion unit when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley irrigation district; Elk Charbon irrigation district; the Williston irrigation project; the Oakes irrigation project; other irrigation, municipal, rural, and industrial water supply projects; augmented streamflow and ground water recharge projects; development of a Red River valley water supply; and delivery of Missouri River water to the Sheyenne River.
8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or 61-24.3-01.
9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 or subdivision a of subsection 7 for a project unless federal funds have been appropriated for that project.
10. Notwithstanding this section, if bonds are issued under this chapter, any bonds subsequently issued after the first issuance must meet the same conditions as the bonds initially issued.
11. Notwithstanding this section, except for a project listed in subdivision a of subsection 7 the state water commission may not issue bonds under this chapter unless the local project sponsor has agreed to repay the local project sponsor's share of any bonds issued for the entire nonfederal share of the cost of a project.

61-02.1-02. Bond issuance amount limited.

1. The state water commission bonds issued for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01 may not exceed forty-five percent and bonds issued for flood control or reduction projects meeting the requirements of subdivision b or c of subsection 5 of section 61-02.1-01 may not exceed one-half of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the flood control or reduction project or, in the aggregate, sixty million three hundred thousand dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves, whichever is less. Of the sixty million three hundred thousand dollars authorized in this subsection for flood control or reduction projects under subsection 5 of section 61-02.1-01, fifty-two million dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01, three million five hundred thousand dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision b of subsection 5 of section 61-02.1-01, and four million eight hundred thousand dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision c of subsection 5 of section 61-02.1-01.
2. The state water commission bonds issued as provided in subsection 6 of section 61-02.1-01 for continued construction of the southwest pipeline project may not exceed, in the aggregate, four million five hundred

thousand dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves.

3. The state water commission bonds issued as provided in subsection 7 of section 61-02.1-01 for a Devils Lake outlet to the Sheyenne River and to west Stump Lake or other projects listed in subdivision b of subsection 7 of section 61-02.1-01 may not exceed, in the aggregate, twenty million dollars, plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The state water commission may use all or part of the proceeds of bonds issued as provided in subsection 7 of section 61-02.1-01 and the proceeds are appropriated to match, in a ratio no greater than required by the federal government, any federal funds available for the projects identified in subsection 7 of section 61-02.1-01 and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may require any political subdivision affected by Devils Lake flooding to participate in the cost of construction of an outlet from Devils Lake to the Sheyenne River and to west Stump Lake by providing matching funds in a percentage of the construction costs determined by the commission to be reasonable in light of the benefits to be received by that political subdivision in relation to benefits received by all benefited political subdivisions. Any local matching fund requirement must be determined by the commission and the affected political subdivisions must be informed of their matching fund obligation prior to issuance of bonds pursuant to this chapter.
4. For any project that requires federal participation, the state water commission may issue bonds equal to the estimated project costs less any local participation. Except for a project listed in subdivision a of subsection 7 of section 61-02.1-01, if the state water commission issues bonds for both the state and local cost-share, an agreement for the local repayment of the local cost-share must be a part of an agreement between the state water commission and the local project sponsor to issue bonds for the nonfederal share.

61-02.1-03. Limitation of action. An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this chapter unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of the bonds. The state water commission may commence a special proceeding any time after the effective date of this chapter in and by which the constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

61-02.1-04. Bonds payable from appropriations and other revenues.

1. Principal and interest on bonds issued for flood control or reduction projects as provided in this chapter are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission

makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of flood control or reduction projects to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

2. Principal and interest on bonds issued for continued construction of the southwest pipeline project are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, or from payment from the Perkins County rural water system, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of the southwest pipeline project to pay bonds issued for the project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.
3. Principal and interest on bonds issued under subsection 7 of section 61-02.1-01 are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of an outlet to Devils Lake to pay bonds issued for that project, or financing a statewide water development program to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

4. Obligations issued as provided in this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the sources as described in this chapter.
5. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from nongeneral fund sources. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

61-02.1-05. Water development trust fund. Moneys received by the state pursuant to the 1998 settlement agreement with tobacco product manufacturers, or any successor agreement, and any earnings on these moneys, must be deposited in the water development trust fund in the state treasury for use in paying for bonds issued as provided in this chapter and for other water projects as provided in 1999 House Bill No. 1475.

SECTION 4. LINE OF CREDIT - APPROPRIATION. The Bank of North Dakota shall extend a line of credit not to exceed \$84,800,000, which is hereby appropriated for the biennium beginning July 1, 1999, and ending June 30, 2001, to the state water commission for the purpose of interim financing until bonds are issued under chapter 61-02.1. Advances on the line of credit may be made only when a source of repayment has been identified and determined to be available.

SECTION 5. CORPORATE CENTER - CONTRACT TO PLEDGE REVENUES. Before the issuance of any bonds for any flood control or reduction project in Grand Forks as provided in chapter 61-02.1, the state water commission shall require a contract be entered with the city of Grand Forks pledging revenue from the corporate center in that city as follows:

1. After all moneys pledged for the repayment of revenue bonds for the corporate center project have been paid, the city must pledge revenue from the project to the water development trust fund as repayment for the flood control or reduction project to facilitate economic development in this state. This contract must be in compliance with all applicable federal requirements.
2. If the corporate center is voluntarily sold, the city must pledge the proceeds of the sale, subject to the rights of bondholders and all applicable federal requirements, to the water development trust fund as repayment for the flood control or reduction project to facilitate economic development in this state. The corporate center may not be voluntarily sold without the prior approval of the budget section of the legislative council.
3. The revenue to be pledged must be in amounts similar to the amounts previously dedicated each year for the repayment of the revenue bonds.

4. The period during which revenue must be pledged under this section is from the date of the final payment of the revenue bonds until the end of the projected life of the corporate center, which must be not less than forty years from the date of initial occupancy.
5. Any refinancing of debt or any improvements to the corporate center requiring the incurring of indebtedness cannot be entered without prior approval of the budget section of the legislative council.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-sixth legislative assembly that a total of six million dollars of funding be provided to the state water commission for the southwest pipeline project through a combination of funding sources. The potential funding source must include payment from the Perkins County rural water system, bonds issued by the state water commission, or other available resources.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the water development trust fund, not otherwise appropriated or from bond proceeds, the sum of \$84,800,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of repaying the line of credit extended to the state water commission under section 4 of this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001. It is the intent of the legislative assembly that the funds appropriated in this section are from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05.

SECTION 8. EFFECTIVE DATE. The authority of the commission to issue bonds as provided in subsection 2 of section 61-02.1-01 becomes effective on the date the state engineer certifies to the state water commission that the Perkins County water system will not make a payment to the state water commission in the amount of four million five hundred thousand dollars or January 1, 2000, whichever occurs earlier.

SECTION 9. REPORTS TO LEGISLATIVE COUNCIL AND STANDING COMMITTEES - COMPREHENSIVE STATEWIDE WATER DEVELOPMENT PROGRAM AND STATE WATER MANAGEMENT PLAN IMPLEMENTATION - BOND ISSUANCE. The state engineer shall report periodically to the budget section, any other interim committee designated by the legislative council, and to the house of representatives and the senate standing committees on natural resources and appropriations regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance of bonds to finance construction of flood control projects, the southwest pipeline project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim. The report must include information on the funding sources used to repay any bonds issued under chapter 61-02.1.

SECTION 10. STATEWIDE WATER DEVELOPMENT PROGRAM - LEGISLATIVE INTENT. The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this Act are completed.

SECTION 11. EXPIRATION DATE. The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, 2001, and after that date is ineffective provided, however, that the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 536

HOUSE BILL NO. 1281

(Representatives Berg, Nicholas)
(Senators Kelsh, Klein, Wanzek)

WATER COMMISSION BONDS AND IRRIGATION FINANCE PROGRAM

AN ACT to create and enact sections 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, 61-02-68.19, and a new chapter to title 61 of the North Dakota Century Code, relating to state water commission bonding authority, guarantees of evidences of indebtedness, and creation of an irrigation district finance program; and to amend and reenact sections 61-02-68.1 and 61-02-68.12 of the North Dakota Century Code, relating to guarantees of evidences of indebtedness by the state water commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-68.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-68.1. Borrowing on interim notes - Expenses paid and loans made from proceeds - Issuance of notes. The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes (the terms "interim notes" or "notes" ~~may~~, unless the context ~~demand~~s otherwise requires, may be used in sections 61-02-68.1 through ~~61-02-68.13~~ 61-02-68.19 in lieu of the term "interim financing notes") in evidence thereof in order to provide owners with ~~tax-exempt~~ construction period financing. ~~Such~~ The construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

SECTION 2. AMENDMENT. Section 61-02-68.12 of the North Dakota Century Code is amended and reenacted as follows:

61-02-68.12. Interim financing notes or guarantees not a state obligation - Payment restricted to revenues - Notes or guarantees not a lien. Interim financing notes issued by the commission under this chapter ~~shall~~ or guarantees provided under sections 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, or 61-02-68.19 are not be in any way a debt or liability of this state and ~~shall do~~ not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all ~~such~~ notes ~~shall be~~ or guarantees are payable solely from funds pledged or available for their payment as authorized in this chapter. ~~Such~~ The notes ~~shall~~ or guarantees do not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds received pursuant to an interim financing agreement.

Each note issued under this chapter ~~shall~~ must recite in substance that the note, including interest thereon, is payable solely from a loan or grant to be made by an agency or instrumentality of the United States government, or North Dakota, and

that the note does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

SECTION 3. Section 61-02-68.14 of the North Dakota Century Code is created and enacted as follows:

61-02-68.14. Guarantee issued by commission. The commission may guarantee evidences of indebtedness issued or other obligations undertaken by the owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418], or evidences of indebtedness issued or other obligations undertaken by a not-for-profit organization establishing a financing program for the owners of the water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] for the purpose of providing the owners with construction period financing. Construction period financing may include the cost of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance. A commission guarantee of indebtedness or other obligations of an owner of a water project must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

SECTION 4. Section 61-02-68.15 of the North Dakota Century Code is created and enacted as follows:

61-02-68.15. Pledges. The commission may pledge the municipal, rural, and industrial water supply funds authorized by Pub. L. 99-294 [100 Stat. 418] as security for a guarantee or note. A pledge is valid and binding whenever the pledge is made. The revenues or other moneys pledged and thereafter received by the commission are immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind against the commission, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the commission.

SECTION 5. Section 61-02-68.16 of the North Dakota Century Code is created and enacted as follows:

61-02-68.16. Reserve fund.

1. The commission shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the legislative assembly for the purpose of the fund, all proceeds of notes issued or guaranteed by the commission required to be deposited in the fund by terms of a contract or a resolution of the commission with respect to the proceeds of notes, any moneys or funds of the commission that it determines to deposit in the fund, any moneys made available to the commission for the purposes of the fund from any other source, and any contractual right to the receipt of moneys by the commission for the purpose of the fund, including a letter of credit or similar instrument. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of notes and sinking fund payments as they become due and payable and for the retirement of notes, including payment of any redemption premium required to be paid when any notes are redeemed or retired before maturity, and for the payment of principal and interest on evidences of indebtedness or obligations guaranteed by the commission. Moneys in the reserve fund

may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of the interest due and payable on notes and the principal of notes maturing and payable and sinking fund payments and for the retirement of notes in accordance with the terms of a contract between the commission and its noteholders, for the payment of principal and interest on evidences of indebtedness or obligations of an owner of water projects for which a guarantee has been issued by the commission, and for payment of interest or principal or sinking fund payments or retirement of notes or draws upon a guarantee, for which other moneys of the commission are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the commission unless the commission has determined that notes of the commission cannot be issued under acceptable terms for the payment of the guarantee or that the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the commission and its noteholders to be raised in the current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding notes and the payment required by the terms of any contract to a sinking fund established for the payment or redemption of the notes.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the notes to be taxable under the Internal Revenue Code, then at the discretion of the commission a reserve fund does not need be established before the issuance of notes or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.
3. Notes may not be issued by the commission unless there is in the reserve fund the required debt service reserve for all notes then issued and outstanding and the notes to be issued. This chapter does not prevent or preclude the commission from satisfying this requirement by depositing so much of the proceeds of the notes to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The commission may issue its notes for the purpose of providing an amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet any higher or additional reserve as may be fixed by the commission with respect to the fund.
4. In order to assure the maintenance of the required debt service reserve, there must be appropriated by the legislative assembly and paid to the commission for deposit in the reserve fund any sum certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve or to maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the commission. The commission may approve a resolution for the issuance of notes, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for notes issued under that resolution.

5. If the maturity of a series of notes of the commission is not more than three years from the date of issuance of the notes, the commission may determine that no reserve fund need be established for that respective series of notes or that the reserve fund may be in an amount less than the required debt service reserve. If the determination is made, holders of that respective series of notes do not have an interest in or claim on existing reserve funds established for the security of the holders of previously issued commission notes, and do not have an interest in or claim on reserve funds established for the holders of subsequent issues of notes of the commission.

SECTION 6. Section 61-02-68.17 of the North Dakota Century Code is created and enacted as follows:

61-02-68.17. Additional reserves and funds. The commission may establish additional and further reserves or other funds or accounts as may be necessary, desirable, or convenient to further the accomplishment of the purposes of the commission to comply with the provisions of an agreement made by or a resolution of the commission.

SECTION 7. Section 61-02-68.18 of the North Dakota Century Code is created and enacted as follows:

61-02-68.18. Protection of service during term of guarantee or loan.

1. The service provided or made available by owners of water projects through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the owners of water projects from the commission or any other state entity, may not be curtailed or limited by inclusion of all or any part of the area served by the owners of water projects within the boundaries of any other owners of water projects, or by the granting of any private franchise for similar service within the area served by the owners of water projects, during the term of the guarantee or loan. The owners of water projects providing the service may not be required to obtain or secure a franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another owner of a water project during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two owners of water projects and the commission or other state entity from negotiating an agreement for the right or obligation to provide the service in question, provided that an agreement is invalid unless the commission or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding notes of the commission issued to fund the loan.

SECTION 8. Section 61-02-68.19 of the North Dakota Century Code is created and enacted as follows:

61-02-68.19. Interim financing notes, guarantees, or bonds for municipal, rural, and industrial water supply projects - Public interest. Guarantees made under section 61-02-68.14 or bonds or interim notes issued under chapter 61-02 for the purpose of providing construction period financing for owners of water projects

eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

SECTION 9. A new chapter to title 61 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Bond" means an evidence of indebtedness of the program issued by the commission.
2. "Bondholder" or any similar term, when used with reference to a bond of the program, means any person who is the bearer of any outstanding bond of the program.
3. "Commission" means the state water commission.
4. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a counsel whose opinions are generally accepted by the purchasers of municipal securities.
5. "Municipal security" means an evidence of indebtedness issued by an irrigation district.
6. "Program" means the North Dakota irrigation district finance program established by the commission under this chapter.
7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the program reserve fund or funds.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal of or interest on municipal securities, investment income, revenues, appropriations, liquidation of security, and all other income derived or to be derived by the commission under the program.

Creation of program. The North Dakota irrigation district finance program is established under the operation, management, and control of the commission. The program is constituted as an instrumentality of the state exercising public and governmental functions.

Participation voluntary - Agreement to participate. Participation in the program by an irrigation district is voluntary and no irrigation district may be required to sell its municipal security issues to the program. Notwithstanding any other law, an irrigation district that wishes to participate in the program may enter into an agreement with the program for the purchase by the program of a municipal security issue of the irrigation district, including the purchase by the program of an issue of refunding municipal securities, which may be required by agreement with the program to be issued at a rate of interest higher or lower than that of the municipal security issue to be refunded.

Guarantee, lending, and borrowing powers. The program may guarantee municipal securities issued by an irrigation district. The program may lend money

to irrigation districts through the purchase and holding of municipal securities which are eligible for purchase by the program, under this chapter, according to the terms of a guarantee by the program for the payment of debt service on a municipal security of an irrigation district. However, the program may lend money to irrigation districts through the purchase and holding of municipal securities issued by the irrigation district, without regard to the initial issuance of a guarantee of the principal amount and interest payable on the municipal securities issued, if the commission approves a resolution that authorizes the program to purchase and hold those municipal securities. The authorizing resolution must state that the commission has determined that private bond markets will not be responsive to the needs of the issuing irrigation district concerning the municipal securities or that the municipal securities cannot be sold through private bond markets without the guarantee of the program. The program may hold municipal securities acquired under this chapter for any length of time necessary. The program, for the purposes authorized by this chapter, may issue its bonds payable solely from the revenues available to the program which are authorized or pledged for payment of program bonds and obligations, and assist irrigation districts as provided in this chapter. Bonds or guarantees of the program issued under this chapter are not a debt or liability of the state and do not constitute a loan of the credit of the state, create any debt or liability on behalf of the state, or constitute a pledge of the faith and credit of the state. The bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the program is obligated to pay the principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bonds. Specific funds pledged to fulfill the program's obligations are obligations of the program. All expenses incurred in carrying out this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the program to incur any indebtedness or liability on behalf of or payable by the state. Guarantees or bonds issued under this chapter are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

How bonds or guarantees may be secured. A bond or guarantee issued by the program may be secured by works or lands and the income derived from those works or lands.

Powers. The program has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws and rules for the conduct of its affairs and business and for use of its services.
3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure their payment and to provide for the rights of the holders, and to purchase, hold, and dispose of any of its bonds and obligations.

6. To fix, revise, charge, and collect fees and charges for the use of its services or facilities.
7. To perform any acts and do all things authorized by this chapter, through its officers, agents, or employees, or by contracts with any person.
8. To make and enforce all contracts necessary or desirable for the program or pertaining to any loan to a political subdivision or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution of its powers under this chapter.
9. To purchase or hold municipal securities of irrigation districts at the prices and in the manner deemed advisable by the program and to sell municipal securities acquired or held by it in the manner deemed advisable by the program.
10. To invest any funds or moneys of the program not then required for loans to irrigation districts and for the purchase of municipal securities in the same manner as permitted for the investment of funds belonging to the state or the Bank of North Dakota.
11. To fix and prescribe any form of application or procedure to be required of an irrigation district for the purpose of any guarantee, loan, or the purchase of its municipal securities, and to fix the terms and conditions of any guarantee, loan, or purchase and to enter into agreement with irrigation districts with respect to any such guarantee, loan, or purchase.
12. To consider the need, desirability, or eligibility of a guarantee or loan, the ability of an irrigation district to secure borrowed money from other sources, and the costs of that borrowing without program involvement.
13. To impose and collect charges from an irrigation district for its costs and services in review or consideration of any proposed guarantee or loan to an irrigation district or purchase of municipal securities of an irrigation district, and to impose and collect charges whether or not a guarantee or loan has been made or municipal securities have been guaranteed or purchased.
14. To fix and establish any and all terms and provisions with respect to any guarantee or purchase of municipal securities by the program, including dates and maturities of bonds, provisions as to redemption or payment prior to maturity, and any and all other matters necessary or advisable in the judgment of the program.
15. To procure insurance against any losses in connection with its property, operations, or assets in the amounts and from the insurers as necessary to pay the premiums on the insurance.
16. To the extent permitted under its contracts with the holders of bonds of the program, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the program is a party.

17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

Guarantee of the program. A guarantee by the program of municipal securities of an irrigation district must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

Bonds of the program. Bonds of the program must be authorized by resolution of the commission and may be issued in the form, with dates, interest rates, denominations, rights of conversion, registration, priority of payment, manner, location, and form of payment, terms of redemption, at public or private sale, and at the time and price determined by the commission to be in the best interest of the program.

Pledges. Any pledge of revenue made by the commission as security for a program guarantee or program bonds is valid and binding from the time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the program are immediately subject to the lien of the pledge, without any physical delivery or further act, and the lien of any pledge is valid and binding against all parties having claims of any kind against the program, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created must be filed or recorded, except in the records of the program.

Reserve fund.

1. The program shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited by terms of any contract between the program and its bondholders or any resolution of the program with respect to the proceeds of bonds, any other moneys or funds of the program which are deposited by the program, any contractual right to the receipt of moneys by the program for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the program only for the purposes of the fund from any other source. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as they become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity, and for the payment of principal and interest on municipal securities guaranteed by the program. Moneys in the reserve fund may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable, sinking fund payments, the retirement of bonds in accordance with the terms of any contract between the program and its bondholders, the payment of principal and interest on municipal securities of an irrigation district for which a guarantee has been issued by the program, and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds or execution of a guarantee, other moneys of the program are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the program unless the commission has determined that bonds of the program cannot be issued under acceptable terms for the

payment of the guarantee, or the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the program and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any contracts to sinking funds established for the payment or redemption of the bonds.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because not restricting the yield may cause the bonds to be taxable under the Internal Revenue Code, then, at the discretion of the program, no reserve fund need be established prior to the issuance of bonds, the reserve fund need not be funded to the levels required by this section, or an existing reserve fund may be reduced.
3. No bonds may be issued by the program unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and for the bonds to be issued. Nothing in this chapter prevents the program from satisfying this requirement by depositing upon issuance so much of the proceeds of the bonds to be issued, as is needed to achieve the required debt service reserve. The program may, at any time, issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet higher or additional reserves as may be fixed by the program.
4. In order to ensure maintenance of the required debt service reserve, the legislative assembly shall appropriate and deposit in the reserve fund the amount certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve, or maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the program. However, the commission may approve a resolution for the issuance of bonds, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under the resolution.
5. If the maturity of a series of bonds of the program is three years or less from the date of issuance of the bonds, the program may determine that no reserve fund need be established for that respective series of bonds, or that it may be established in an amount less than the required debt service reserve. If such a determination is made, holders of the respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued program bonds and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the program.

Additional reserves and funds. The program may establish additional reserves, funds, or accounts as it deems necessary to further the program or to comply with any agreement made by, or any resolution of, the program.

Personal liability - Purchase of bonds - Bonds as legal investments - Security.

1. Neither a member of the commission nor any person executing bonds issued under this chapter is liable personally on any bonds by reason of the issuance of those bonds.
2. The program has the power to purchase bonds of the program out of any available funds or moneys of the program. The program may hold, cancel, or resell bonds or notes, subject to any agreements with holders of its bonds.
3. Notwithstanding any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the program pursuant to this chapter.
4. The bonds are authorized security for any and all public deposits.

Tax exemptions - Exemption of property from execution sale.

1. All property of the program and all bonds issued under this chapter are deemed to be serving essential public and governmental purposes and the property and the bonds issued, their transfer and their income, including any profits made on their sale, are exempt from all state, county, and municipal taxes.
2. All property of the program is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the property, nor may any judgment against the program be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the program on its revenues. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds by the program under this chapter or to obtain any relief upon the ground that a resolution is invalid must be commenced within ten days after the adoption of that resolution by the commission. After the expiration of that period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted, nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatever.

Insurance or guaranty. The program is authorized and empowered to obtain from any department or agency of the United States or from nongovernmental insurer any insurance or guaranty, or from a financial institution a letter of credit to the extent the insurance, guaranty, or letter of credit available now or in the future for the payment or repayment of, interest or principal in whole or in part, on any bonds issued by the program, or on any municipal securities purchased or held by the program, or on any guarantee issued by the program, pursuant to this chapter; and to enter into any agreement or contract with respect to any insurance or guaranty, or letter of credit, and pay any required fee, unless doing so would impair

or interfere with the ability of the program to fulfill the terms of any agreement made with the holders of its bonds or guarantees.

Remedies on default of municipal securities. In the event of a default by an irrigation district in the payment of interest on or principal of any municipal securities owned or held by the program, the program may proceed to enforce payment, pursuant to law, of the interest or principal or other amount then due and payable.

Form of municipal securities and investments. All municipal securities held by the program as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the program. All municipal securities at any time purchased, held, or owned by the program must, upon delivery to the program, be in fully marketable form and accompanied by the documentation required from time to time by the program.

Presumption of validity. After issuance, all bonds of the program are conclusively presumed to be fully authorized and issued under the laws of this state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the program.

Protection of service during term of guarantee or loan.

1. The service provided or made available by an irrigation district through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the irrigation district from the program or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the irrigation district within the boundaries of any other irrigation district, or by the granting of any private franchise for similar service within the area served by the irrigation district during the term of the guarantee or loan. The irrigation district providing the service may not be required to obtain or secure any franchise, license, or permit, as a condition of continuing to serve the area if it is included within the boundaries of another irrigation district during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two irrigation districts and the program or other state agency or enterprise from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the program or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the program issued to fund the loan.

Program revenues - Source. The state water commission may use resource trust fund revenues appropriated to it by Senate Bill No. 2023, as approved by the fifty-sixth legislative assembly, for the purpose of funding the reserve funds or paying the obligations of the program.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 537

SENATE BILL NO. 2107

(Natural Resources Committee)
(At the request of the State Engineer)

WATER PERMIT APPLICATIONS

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to water permit applications; and to amend and reenact subsection 4 of section 61-04-05 and section 61-04-06 of the North Dakota Century Code, relating to water permit applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

4. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice of the application, in a form prescribed by rule, in the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.
5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and ~~the time and place of a hearing on the application~~ by the date by which written comments regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.
6. The applicant shall pay all costs of the publication of notice.

SECTION 2. A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.
2. The state engineer shall consider all written comments received and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended

decision must be mailed to the applicant and any person who filed written comments.

3. Within thirty days of service of the recommended decision, the applicant and any person who filed written comments may file additional written comments with the state engineer or request a hearing on the application, or both. If a request for a hearing is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a hearing is made, or if the state engineer determines a hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
4. If two or more municipal or public use water facilities request the hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.

SECTION 3. AMENDMENT. Section 61-04-06 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06. Hearing - Criteria for issuance of permit. ~~Upon the receipt of the proof of publication, the state engineer shall conduct a hearing on the application. If two or more municipal or public use water facilities request a local hearing, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located. The request must be in writing and must be made within fifteen days of when the notice of application is mailed by the applicant pursuant to section 61-04-05. The state engineer shall issue a permit if the state engineer finds all of the following:~~

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
 - a. The benefit to the applicant resulting from the proposed appropriation.
 - b. The effect of the economic activity resulting from the proposed appropriation.
 - c. The effect on fish and game resources and public recreational opportunities.
 - d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.

- e. Harm to other persons resulting from the proposed appropriation.
- f. The intent and ability of the applicant to complete the appropriation.

Subsection 1 of section 28-32-12.2 does not apply to water permit application proceedings unless a request for a hearing is made. If an application is approved, ~~the approval must be noted on the application, and~~ the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6167409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to nine copies of the transcript must be paid by the applicant.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 538

HOUSE BILL NO. 1040

(Legislative Council)
(Insurance and Health Care Committee)

HAIL SUPPRESSION

AN ACT to amend and reenact sections 61-04.1-03, 61-04.1-08, 61-04.1-09, 61-04.1-20, 61-04.1-21, 61-04.1-26, 61-04.1-38, and 61-04.1-39 of the North Dakota Century Code, relating to hail suppression pilot operations by the atmospheric resource board; and to repeal section 61-04.1-03.1 of the North Dakota Century Code, relating to the transition from the weather modification board to the atmospheric resource board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-03. Definitions. As used ~~herein~~ in this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Board" means the North Dakota atmospheric resource board which, in the exercise of the powers granted ~~herein~~ under this chapter, ~~shall have~~ has all of the powers of an administrative agency as defined in chapter 28-32.
2. "Controller" refers to any licensee duly authorized in this state to engage in weather modification ~~activities~~ operations.
3. "Geographical region" means a geographical area with a contiguous boundary that may enclose a portion of any county or counties.
4. ~~5.~~ 5. "Hail suppression" refers to the activation of any process ~~which~~ that will reduce, modify, suppress, eliminate, or soften hail formed in clouds or storms.
4. ~~5.~~ 5. "Increasing precipitation" refers to the activation of any process ~~which~~ that will actually result in greater amounts of moisture reaching the ground in any area from a cloud or cloud system than would have occurred naturally.
5. ~~6.~~ 6. "Initiating precipitation" refers to the process of causing precipitation from clouds ~~that~~ which could not otherwise have occurred naturally or inducing precipitation significantly earlier than would have occurred naturally.
6. ~~7.~~ 7. "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the weather within a limited geographical area or within a limited period of time.

7. ~~8.~~ 8. "Research and development" means exploration, field experimentation, and extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production of models, devices, equipment, materials, and processes.
8. ~~9.~~ 9. "Weather modification" means and extends to the control, alteration, and amelioration of weather elements including man-caused changes in the natural precipitation process, hail suppression or modification, and alteration of other weather phenomena including clouds, temperature, wind direction, and velocity, and the initiating, increasing, decreasing, and otherwise modifying by artificial methods of precipitation in the form of rain, snow, hail, mist, or fog through cloud seeding, electrification, or by other means to provide immediate practical benefits.
10. "Weather modification authority" means the governing body created by a board of county commissioners under section 61-04.1-22.1, 61-04.1-23, 61-04.1-27, 61-04.1-29, or 61-04.1-31.

SECTION 2. AMENDMENT. Section 61-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-08. Powers and duties of board. The board ~~may exercise~~ has the following powers and ~~shall have the following~~ duties:

1. The board shall appoint an executive director to serve at ~~its~~ the board's discretion; and to perform such duties ~~as~~ assigned by the board.
2. The board shall authorize the employment of ~~whatever~~ staff if the board deems necessary to carry out the provisions of this chapter. The executive director shall hire the staff, subject to the approval of the board.
3. The board shall adopt rules concerning qualifications, procedures, and conditions for issuance, revocation, suspension, and modification of licenses and permits; standards and instructions governing weather modification operations, including monitoring and evaluation; recordkeeping and reporting, and the board shall establish procedures and forms for ~~such~~ this recordkeeping and reporting. The board may adopt all other rules necessary to the administration of this chapter. The provisions of chapter 28-32 ~~shall~~ apply to this chapter; and rules of the board ~~shall~~ must be published in the North Dakota Administrative Code.
4. The board may contract with any person; ~~association, partnership, corporation, or limited liability company,~~ with the federal government, and with any county or groups of counties, as provided in section ~~61-04.1-20~~, to carry out weather modification operations and ~~shall~~, in connection with regulated weather modification operations in a county or geographical region, shall carry on monitoring and evaluation activities.
5. The board may order any person who is conducting weather modification operations in violation of this chapter; or any rules adopted ~~pursuant to it~~ implement this chapter, to cease and desist from ~~such~~

those operations and the order shall be is enforceable in any court of competent jurisdiction within this state.

6. The board may cooperate and contract with any ~~private person or any local, state, or national commission, organization, or agency~~ engaged in activities similar to the work of the board and may make contracts and agreements to carry out programs consistent with the purpose and intent of this chapter. The board may ~~also, in accordance with law,~~ request and accept any grants of funds or services from any ~~such commission, organization, person, or agency,~~ and expend ~~such these~~ funds or use ~~such these~~ services to carry out ~~the provisions of~~ this chapter.
7. The board shall monitor the current state of knowledge regarding the magnitude and impacts of possible regional and global climatic changes and shall provide ~~such~~ information to other state agencies that may benefit from ~~such this~~ knowledge.
8. The board shall administer and enforce the provisions of this chapter and do all things reasonably necessary to effectuate the purposes of this chapter.
9. The board may plan and study a hail suppression pilot program that would provide urban and rural hail suppression operations statewide or to any portion of the state.

SECTION 3. AMENDMENT. Section 61-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-09. Board to establish research and development program - Hail suppression pilot program.

1. The board shall establish a program of weather modification research and development in this state. The board shall supervise and coordinate all research and development activities in the state or research and development activities outside of the state participated in or conducted by any state institution or state or county agency.
2. If the board plans and studies a hail suppression pilot program, the board may conduct a planning phase that includes studying the impact on the environment, providing public education, and formulating an operations plan.

SECTION 4. AMENDMENT. Section 61-04.1-20 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-20. Board may create operating districts - Representation of noncontracting counties. The board ~~shall have the authority to~~ may place any county ~~contracting~~ or geographical region for which a person contracts with the state for weather modification operations; in ~~such an~~ any operational district ~~as the board shall deem~~ determines necessary to best provide ~~such that~~ that county or geographical region with the benefits of weather modification. In determining the boundaries of ~~such an operating districts~~ district, the board shall consider the patterns of crops within the state, climatic patterns, and the limitations of aircraft and other technical equipment. The board may assign any county ~~which that~~ has not created a weather modification authority under this chapter to an operating

district solely for the purpose of representation on the operations committee of ~~such~~ that district.

SECTION 5. AMENDMENT. Section 61-04.1-21 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-21. District operations advisory committees created - Duties.

1. There ~~shall~~ must be a district operations advisory committee in each operations district created in accordance with section 61-04.1-20. Each committee ~~shall~~ must be composed of one commissioner of the weather modification authority, if a weather modification authority exists, from each county within ~~such~~ the district; a representative of each person contracting for a geographical region assigned to the district; and one member of the board of county commissioners from ~~the~~ each county ~~or~~ counties assigned to the district ~~in accordance with section 61-04.1-20~~. Each advisory committee ~~shall~~, upon majority vote, with the concurrence of the board, ~~prescribe~~ shall adopt rules and bylaws necessary to govern ~~its~~ that committee's procedures and meetings. Each committee shall evaluate weather modification operations within ~~its~~ respective that committee's district and make recommendations and proposals to the board concerning ~~such~~ these operations.
2. The weather modification authority of any county authorized to contract for weather modification operations under this chapter ~~and~~ which is not assigned to an operations district; shall assume the functions of the district operations committee and ~~shall have and~~ may exercise the powers and duties assigned to the operations committees by this chapter and by the rules of the board.

SECTION 6. AMENDMENT. Section 61-04.1-26 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-26. Tax may be certified by weather modification authority. The weather modification authority may certify annually to the board of county commissioners a tax of not to exceed seven mills upon the taxable valuation of the property in the county for a "weather modification" fund. If weather modification services are not provided to the entire county, the weather modification authority may certify annually to the board of county commissioners a tax for a weather modification fund of not to exceed seven mills upon the taxable valuation of the property in the county designated to receive weather modification services. The tax shall be levied by the board of county commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund shall be used only for weather modification activities in conjunction with the state of North Dakota. The tax certified by the weather modification authority is limited to the period of existence of the weather modification authority as provided for in this chapter.

SECTION 7. AMENDMENT. Section 61-04.1-38 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-38. Board may receive and expend funds. The board is ~~hereby authorized to~~ may receive and accept in the name of the state any ~~and all~~ funds ~~which may be~~ that are offered or become available from any federal grants grant or appropriations appropriation, private gifts gift, donations donation, or bequests bequest, county funds, or funds from any other source; except license and permit

fees, and to expend ~~said~~ these funds for the expense of administering this chapter, and, with the exception of county funds and funds from any other person contracting with the board for weather modification operations, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency in this state ~~either~~ by direct grant, ~~by~~ contract, or ~~by~~ other means.

All federal grants, federal appropriations, private gifts, donations, or bequests, county funds, or funds from any other source, except license and permit fees, received by the board ~~shall~~ must be paid over to the state treasurer, who shall credit ~~same~~ this amount to a special fund in the state treasury known as the "state weather modification fund". All proceeds deposited by the state treasurer in the state weather modification fund are hereby appropriated to the board and ~~shall~~, if expended, must be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the board, and ~~shall~~ must be used for the purpose of paying for the expense of administration of this chapter and, with the exception of county funds or funds from any other person contracting with the board for weather modification operations, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency by direct grant, ~~by~~ contract, or ~~by~~ other means.

SECTION 8. AMENDMENT. Section 61-04.1-39 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-39. ~~County appropriations~~ Payment for weather modification - State to provide funds. Any ~~county~~ weather modification authority ~~which has~~ or person that contracted with the board for weather modification operations under this chapter shall appropriate to the state weather modification fund ~~such the~~ the amount as is determined by the board to be necessary to provide ~~such county that weather modification authority or person~~ with weather modification operations. The board may expend, from the state weather modification fund, ~~such the~~ funds as it the board deems necessary to provide a contracting ~~counties~~ weather modification authority or person with weather modification operations.

SECTION 9. REPEAL. Section 61-04.1-03.1 of the North Dakota Century Code is repealed.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 539

SENATE BILL NO. 2369

(Senators Fischer, Heitkamp, D. Mathern)
(Representatives Aarsvold, Nelson)

WATER RESOURCE DISTRICT PROJECT NOTICES

AN ACT to amend and reenact sections 61-16.1-18 and 61-16.1-22 of the North Dakota Century Code, relating to water resource district project notices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-18 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-18. Hearing - Notice - Contents. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of the filing must be included in the notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing must specify the general nature of the project as finally determined by the engineer and the board. The notice of hearing must also specify when and where votes concerning the proposed project may be filed ~~and an~~. The assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto, along with a copy of the notice of the hearing, must be mailed to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The board may send the assessment list and notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing must not be less than twenty days after the mailing of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

SECTION 2. AMENDMENT. Section 61-16.1-22 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing. After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for two successive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The date set for the hearing ~~shall~~ may not be ~~not~~ less than twenty days after the ~~first publication~~ mailing of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which ~~such~~ the assessments are made, or the part of ~~such~~ the cost to be paid by special assessment. ~~No~~ An assessment ~~shall~~ may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that the same is correct as confirmed by the board and ~~thereupon~~ shall file the list in the office of the secretary.

Approved March 19, 1999

Filed March 19, 1999

CHAPTER 540

HOUSE BILL NO. 1417 (Representatives Gorder, Herbel) (Senator Tallackson)

DRAIN OBSTRUCTION REMOVAL AND DRAIN CLOSURE

AN ACT to amend and reenact sections 61-16.1-51, 61-16.1-53, 61-21-43.1, 61-21-67, and 61-32-07 of the North Dakota Century Code, relating to the time within which obstructions to drains, noncomplying dikes or dams, and noncomplying drains must be removed or closed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition. If ~~the~~ a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board ~~shall determine~~ determines, but not less than ~~thirty~~ fifteen days, the board shall procure removal of the obstruction and assess the cost ~~thereof~~ of the removal, or ~~such~~ the portion as the board ~~shall determine~~ determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of ~~such~~ the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. ~~Any assessments~~ Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions~~ of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

For the purposes of this section, "an obstruction to a drain" means ~~any~~ a barrier to a watercourse, as defined by section 61-01-06, or ~~any~~ an artificial drain, which materially affects the free flow of waters in ~~such~~ the watercourse or drain.

SECTION 2. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, has been established or constructed by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules ~~promulgated~~ adopted by the board, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within ~~such the~~ the period ~~as the board shall determine~~ determines, but not less than ~~thirty fifteen~~ thirty fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost ~~thereof of the removal~~, or ~~such the~~ the portion ~~as the board shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of ~~such the~~ the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device. ~~Any assessments~~ Assessments levied under ~~the provisions of~~ this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. ~~Any~~ A person aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to ~~such~~ an appeal.

SECTION 3. AMENDMENT. Section 61-21-43.1 of the North Dakota Century Code is amended and reenacted as follows:

61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction. If the board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within ~~such the~~ the period ~~as the board determines~~, but not less than ~~thirty fifteen~~ thirty fifteen days, the board shall procure removal of the obstruction and assess the cost ~~thereof of the removal~~, or ~~such the~~ the portion ~~as the board determines~~, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting ~~such a~~ the landowner or landowner's tenant to maintain ~~such an~~ the obstruction. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro

rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

SECTION 4. AMENDMENT. Section 61-21-67 of the North Dakota Century Code is amended and reenacted as follows:

61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to ~~the provisions of~~ this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within ~~such~~ the period as the board determines, but not less than ~~thirty~~ fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~ of the closing or filling, of such or the portion as the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

SECTION 5. AMENDMENT. Section 61-32-07 of the North Dakota Century Code is amended and reenacted as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board determines, but not less than ~~thirty~~ fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~ of the closing or filling, or such the portion as

the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. ~~Any~~ A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 541

HOUSE BILL NO. 1139

(Natural Resources Committee)
(At the request of the State Engineer)

WATER RESOURCE BOARD APPEALS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to appeals of water resource board decisions of noncomplying dams, dikes, or other devices to the state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Appeal of board decisions - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by registered mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the appealing party believes the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state engineer. The state engineer, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:

1. Notify the landowner by registered mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the dam, dike, or other device is not removed within such reasonable time as the state engineer determines, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the property of the responsible landowner. The notice from the state engineer must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the dam, dike, or other device removed within such reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

The authority granted in this section may only be exercised for dams, dikes, or other devices constructed after the effective date of this Act.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 542

HOUSE BILL NO. 1167

(Natural Resources Committee)
(At the request of the State Engineer)

FLOODPLAINS

AN ACT to create and enact a new section to chapter 11-33.2, a new subsection to section 61-16.2-02, and a new section to chapter 61-16.2 of the North Dakota Century Code, relating to identifying the floodplain on plats, definition of community, and state engineer review of uses in floodways; to amend and reenact subsection 2 of section 11-33-03, subsection 2 of section 40-47-03, subsection 11 of section 40-50.1-01, sections 58-03-12, 61-16.2-04, 61-16.2-08, and 61-16.2-13 of the North Dakota Century Code, relating to emergency management, identifying floodplain on plats, delineation of the floodway for lakes, elevation of structure in the floodway, and mandatory community participation in the flood insurance program; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-33-03 of the North Dakota Century Code is amended and reenacted as follows:

2. To ~~secure safety from fire, flood, and other dangers~~ provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

SECTION 2. A new section to chapter 11-33.2 of the North Dakota Century Code is created and enacted as follows:

Contents of plat - Location and elevation of lakes, rivers, or streams - Notification of floodplain. Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable bench mark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeters], which must be given in mean sea level datum.

SECTION 3. AMENDMENT. Subsection 2 of section 40-47-03 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Secure safety from fire, panic, and other dangers~~ Provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment;

SECTION 4. AMENDMENT. Subsection 11 of section 40-50.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. Any plat which includes lands abutting upon any lake, river, or stream must show; ~~for the purpose of information only~~, a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the state ~~water commission engineer~~ or a federal ~~emergency management~~ agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable bench mark described on the plat ~~together~~ with its location and elevation to the nearest hundredth of a foot [0.3048 centimeters], which must be given in mean sea level datum.

SECTION 5. AMENDMENT. Section 58-03-12 of the North Dakota Century Code is amended and reenacted as follows:

58-03-12. Basis for township zoning regulations and restrictions. The regulations and restrictions established in any township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and must be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, ~~and~~ promote health, safety, and general welfare, and provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

SECTION 6. A new subsection to section 61-16.2-02 of the North Dakota Century Code is created and enacted as follows:

"Community" means any political subdivision that has the authority to zone.

SECTION 7. AMENDMENT. Section 61-16.2-04 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-04. Delineation of floodplains and floodways. The state engineer shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse or lake, the state engineer shall then consult with the appropriate district and each affected community. The state engineer, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the state engineer and the affected community shall notify the appropriate federal agency and request that such material be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point.

SECTION 8. AMENDMENT. Section 61-16.2-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-08. Community standards - Permissible uses within flood fringe.

1. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:
 4. a. Any use permitted in the designated floodway pursuant to section 61-16.2-06.
 2. b. Structures, including residential, commercial, and industrial structures; provided, that:
 - a. (1) Such structures meet the standards either adopted by the community or ~~under this chapter, whichever are more restrictive~~ if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3.
 - b. (2) Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to ~~at least~~ at least one foot [30.48 centimeters] above the base flood level unless granted a residential floodproof exception under the national flood insurance program.
 - c. (3) Commercial and industrial structures are either constructed on fill as specified in ~~subdivision b~~ paragraph 2 or are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

2. a. Standards adopted by the community for structures in the flood fringe must meet or exceed the following:
- (1) Residential structures must be constructed on fill so that the lowest floor, including basements, is elevated to or above the base flood level unless granted a residential floodproof exception under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.].
 - (2) Commercial and industrial structures must be constructed on fill as specified in subdivision a or must be adequately floodproofed up to an elevation no lower than the base flood level. The floodproofing must be in accordance with the standards adopted by the community under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.
- b. Communities are encouraged to adopt standards that require residential structures to be constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level and commercial and industrial structures are constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level or the structures are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level.

SECTION 9. AMENDMENT. Section 61-16.2-13 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-13. Flood insurance - State policy. It is the policy of this state that all communities that have residential, commercial, or industrial structures in areas subject to excessive flooding, as determined by the state engineer, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

SECTION 10. A new section to chapter 61-16.2 of the North Dakota Century Code is created and enacted as follows:

State engineer review of development in mapped floodways - Exceptions. Before issuing a permit or authorization to allow a use in a mapped regulatory floodway, the community responsible for permitting or authorizing such use shall submit to the state engineer for review all technical documentation, including a functioning hydraulic model and other information analyzing the proposed use and identifying its proposed impact. Upon the request of the state engineer, the community shall provide additional information needed by the state engineer for the state engineer's review. The state engineer shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer for an exemption from this section. The state engineer may grant the exemption if the state engineer determines that the community has the

technical hydraulic expertise to determine if the proposed use is in compliance with state and federal law.

SECTION 11. EFFECTIVE DATE. Section 8 of this Act becomes effective on August 1, 2000.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 543

HOUSE BILL NO. 1166

(Natural Resources Committee)

(At the request of the State Water Commission)

NORTHWEST AREA WATER SUPPLY PROJECT RATES, FUNDS, COSTS, AND SERVICE

AN ACT to create and enact five new sections to chapter 61-24.6 of the North Dakota Century Code, relating to water rates, operation and maintenance fund, reserve fund for replacement, capital costs, and areas served by the northwest area water supply project; and to amend and reenact sections 61-02-23.1, 61-24.3-19, and subsections 3, 6, and 7 of section 61-24.6-02 of the North Dakota Century Code, relating to condemnation of property for the northwest area water supply project, validation of southwest pipeline project water service contracts, and inclusion of Pierce County in the northwest area water supply project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-23.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-23.1. Condemnation by the water commission. Whenever a right of way is to be taken by condemnation proceedings for any purpose authorized by ~~chapter~~ chapters 61-24.3 or 61-24.6, the commission may take possession of the right of way after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the property owner in writing of ~~such~~ the deposit. Within thirty days after receiving ~~such~~ notice, the property owner may appeal to the district court by serving notice of appeal upon the water commission and the matter must be tried at the next term of court with a jury, unless a jury ~~be~~ is waived, in the manner prescribed for trials under chapter 32-15.

SECTION 2. AMENDMENT. Section 61-24.3-19 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-19. Validation of water service contracts. Water service contracts entered ~~into~~ by the commission for the distribution and sale of water to water user entities from the southwest pipeline project are ~~hereby deemed~~ confirmed and approved by the legislative assembly. The commission may commence a special proceeding in and by which the proceedings of the commission and the making of water service contracts ~~shall be~~ are judicially examined, approved, and confirmed, or disapproved and disaffirmed. ~~Such~~ The proceeding ~~shall~~ must comply as nearly as possible with the procedure authorized by sections 61-07-22 through 61-07-28 for irrigation district contracts. The requirements of section 40-33-16 are not applicable to contracts between the state water commission and cities for water service from the southwest pipeline project, provided the contracts were approved by the city governing body and executed before January 1, 1999.

SECTION 3. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Commission to fix water rates for the northwest area water supply project.

The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the northwest area water supply project. The payments for water service must include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the northwest area water supply project reserve fund for replacement, as established by section 4 of this Act, for replacement and extraordinary maintenance of northwest area water supply project works. The amount of such the reserve fund for replacement must be determined by the commission.

SECTION 4. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Operation and maintenance fund - Deposit - Use. Revenues received by the commission from water user entities or otherwise for operation and maintenance of the northwest area water supply project must be maintained, as a part of the moneys of the state received and kept by the state treasurer in a fund to be designated as the northwest area water supply project operation and maintenance fund. All moneys received by the state treasurer for operation and maintenance of the northwest area water supply project and the interest on moneys in the fund must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for paying for costs and expenditures for operation and maintenance of the northwest area water supply project.

SECTION 5. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Reserve fund for replacement - Deposit - Use. Revenues received by the commission from water user entities or otherwise for replacement and extraordinary maintenance of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as a part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project reserve fund for replacement. All moneys received by the state treasurer for replacement and extraordinary maintenance of the northwest area water supply project and the interest on the moneys must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for replacement and extraordinary maintenance of the northwest area water supply project.

SECTION 6. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Capital costs - Deposit - Use. Money derived and received from water user entities or otherwise for capital costs or construction of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project fund for capital costs and construction. All moneys received by the state treasurer for capital costs and construction of the northwest area water supply project, and all interest on the

moneys, must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for capital costs and construction of the northwest area water supply project.

SECTION 7. AMENDMENT. Subsections 3, 6, and 7 of section 61-24.6-02 of the North Dakota Century Code are amended and reenacted as follows:

3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts.
6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
7. One representative of a municipality other than the city of Minot, located in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.

SECTION 8. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Areas served by the northwest area water supply project. The commission may provide, as part of the northwest area water supply project, delivery, distribution, and treatment of water from the Missouri River or other sources, to areas in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, and Williams Counties. The facilities for delivery of water may be from a pipeline transmission and delivery system or through other works, as determined by the commission.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 544

HOUSE BILL NO. 1140 (Natural Resources Committee) (At the request of the State Engineer)

WATER DISTRICT ELECTIONS, DISSOLUTIONS, AND MERGERS

AN ACT to amend and reenact sections 61-35-04, 61-35-07, 61-35-08, and subsection 1 of section 61-35-25 of the North Dakota Century Code, relating to payment of publication costs to create a water district, election of a board of a water district, and notice of dissolution or merger of a rural water corporation or cooperative.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-35-04 of the North Dakota Century Code is amended and reenacted as follows:

61-35-04. Hearing after filing. When a petition for the organization of a district is filed with the state engineer, the state engineer shall fix a time for a hearing on the petition not less than fifteen nor more than forty-five days after the filing of the petition. The state engineer shall prepare a notice as required by section 61-35-05. At least seven days before the date fixed for the hearing on the petition, the notice must be:

1. ~~Published~~ published in the official county newspapers in the counties included within the district.
2. ~~Transmitted with a copy of the original petition to the state engineer~~ The applicant shall pay all costs of the publication notice.

SECTION 2. AMENDMENT. Section 61-35-07 of the North Dakota Century Code is amended and reenacted as follows:

61-35-07. Findings - Order. After the hearing, the state engineer may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the state engineer does not find that the district is reasonably necessary, the state engineer shall dismiss the petition. If the state engineer finds that required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, the state engineer shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order shall be published in the same newspaper or newspapers that published the notice of hearing. The applicant shall pay all costs of the publication of the order. The state engineer shall prepare and preserve a complete record of the hearing on the petition and the state engineer's findings and action.

SECTION 3. AMENDMENT. Section 61-35-08 of the North Dakota Century Code is amended and reenacted as follows:

61-35-08. Meeting of members - Election of board. As a part of the order organizing the district, the state engineer shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board may not be later than thirty days after the ~~hearing~~ order is issued. The number of directors on the board, not to exceed nine, must be determined by a majority vote of those members present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, forfeits the office of director.

³⁶⁴ **SECTION 4. AMENDMENT.** Subsection 1 of section 61-35-25 of the North Dakota Century Code is amended and reenacted as follows:

1. After final approval of the petition by the state engineer, the secretary of the corporation or cooperative shall file a notice with the ~~corporation or cooperative~~ secretary of state or attorney general, if applicable, in accordance with title 10.

Approved March 16, 1999
Filed March 16, 1999

³⁶⁴ Section 61-35-25 was also amended by section 78 of House Bill No. 1045, chapter 50.